PT 98-77
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

GENESEO GOOD SAMARITAN CENTER	**)**		
Applicant	**)**		
	)	**Docket #**	**95-37-114**
v.	**)**		**95-37-115**
	)	**Parcel Index #**	**08-21-407-044-0040**
THE DEPARTMENT OF REVENUE	**)**		**08-21-407-043-0041**
OF THE STATE OF ILLINOIS	**)**		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. John W. Bean and Ms. Amy E. Hackler appeared on behalf of the Geneseo Good Samaritan Center.

Synopsis:

The hearing in these matters was held on January 20, 1998, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois, to determine whether or not Henry County Parcel Index Nos. 08-21-407-044-0040 and 08-21-407-043-0041 qualified for exemption from real estate taxation for the 1995 assessment year.

The Evangelical Lutheran Good Samaritan Society (hereinafter referred to as the "Society") is a corporation of the State of North Dakota, duly authorized to transact business in Illinois as a not-for-profit corporation. The Society owns and operates a facility in Geneseo, Illinois, commonly known as the Geneseo Good Samaritan Center, (hereinafter referred to as the "Center").

Mr. Andrew Applegate, administrator of the Center, was present and testified on behalf of the Center.

The issues in this matter include, first, whether the Society is a charitable organization; secondly, whether the Society owned the two parcels here in issue during the 1995 assessment year; and finally, whether the Society and the Center used these parcels for charitable purposes during the 1995 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the Society, in the operation of a nursing home and eight independent living apartments, has previously been determined to be a charitable organization by the Department. It is also determined that the Society owned the two parcels here in issue during the 1995 assessment year. Finally, it is determined that the Society and the Center were not using these parcels and the duplexes located thereon for charitable purposes during the 1995 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that these parcels and the duplexes located thereon did not qualify for exemption for the 1995 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6B.

2. On February 8, 1996, the Henry County Board of Review transmitted to the Department Applications For Property Tax Exemption To Board of Review concerning Henry County Parcel Index Nos. 08-21-407-044-0040 and 08-21-407-043-0041 for the 1995 assessment year. (Dept. Ex. Nos. 2 & 2D)

3. On September 6, 1996, the Department advised the Center that it was denying the exemption of the two parcels here in issue and the duplexes located thereon for the reason that said parcels were not in exempt use during the 1995 assessment year. (Dept. Ex. Nos. 3 & 3A)

4. On September 24, 1996, one of the attorneys for the Center requested a formal hearing concerning these parcels. (Dept. Ex. No. 4)

5. The hearing in these matters conducted on January 20, 1998, was held pursuant to that request.

6. At the close of the hearing, the attorneys for the Center requested permission to be allowed to file proposed findings of fact and a brief on or before March 27, 1998. On March 25, 1998, the attorneys for the Center filed 28 proposed findings of fact and a brief. Any of the aforementioned proposed findings of fact which are included in these findings of fact will be so identified. (Tr. p. 109)

7. The Society acquired the parcels here in issue by a warranty deed and a quit claim deed, both dated October 27, 1993. (Dept. Ex. Nos. 2H & 2I)

8. The Ev. Lutheran Good Samaritan Society which was incorporated in North Dakota was authorized to do business in Illinois pursuant to the "General Not For Profit Corporation Act" of Illinois under that name on May 27, 1966, for purposes which included, among others, the following:

> The ownership, operation and management of Christian Homes for the epileptic, senile, and other defectives; Nursing homes; Homes for elderly people; Hospitals; Homes for Senior Citizens. (Dept. Ex. No. 6)

9. On November 2, 1989, the name of the Ev. Lutheran Good Samaritan Society was changed to the Evangelical Lutheran Good Samaritan Society (the Society). (Dept. Ex. No. 6A)

10. The Society is a social service ministry of both the Evangelical Lutheran Church in America and the Lutheran Church-Missouri Synod. (Tr. pp. 49 & 50)

11. At the time of the hearing in this matter, the Society was a foreign corporation which was authorized to conduct business in Illinois. The facility of the Society in Geneseo, Illinois, is commonly known as the Center. (Tr. p. 20) (Appl. Prop. Fi. Ft. 7)

12. The Society, during 1995, owned and operated a multi-level of care facility for the aged in Geneseo, Illinois. This facility in Geneseo, commonly known as the Center, includes an

intermediate care unit which contains 72 beds, an independent living unit consisting of eight apartments, four duplex independent living units located on Illinois Street, and two duplex independent living units located on Chestnut Street. (Tr. pp. 27-29, Appl. Ex. 3)

13. The hearing in these matters concerns only Henry County Parcel Index Nos. 08-21-407-044-0040 and 08-21-407-043-0041 which are improved with the two Chestnut Street duplex independent living units. (Tr. pp. 297-31, Appl. Ex. 3)

14. On April 4, 1972, The Ev. Lutheran Good Samaritan Society board of directors adopted the following resolution:

> BE IT RESOLVED that the minutes of The Ev. Lutheran Good Samaritan Society reflect the policy and practice of the Society since its inception in 1922, that no person who applied for treatment or care is denied admission or once admitted is discharged because of poverty or riches, creed, station or color. All residents are accepted without the imposition of such conditions as to unreasonably amount to a denial of the facilities of the Society to objects of Charity. (Dept. Ex. No. 2Q) (Appl. Prop. Fi. Ft. No.13)

15. Occupancy Agreements for the four two bedroom units which comprise the two duplex buildings at issue, commonly known as the Chestnut Street duplexes, were executed by the first residents of those duplexes between February 8, 1993, and March 23, 1993. Each of those Occupancy Agreements required the prospective resident of the unit to pay an admission fee of $67,500.00 before they moved into the unit. (Appl. Ex. Nos. 10-10C)

16. The first occupant of the first duplex living unit was Kenneth Kemp. Mr. Kemp was in the intermediate care nursing facility on the date of the hearing. (Tr. p. 31, Appl. Ex. No. 10)

17. The first occupant of the second duplex living unit was Elsie Withrow. Ms. Withrow was still living in that unit on the date of the hearing. (Tr. p. 31, Appl. Ex. No. 10A)

18. The first occupant of the third duplex living unit was Mr. Meade. Mr. Meade was still living in the unit on the date of the hearing. (Tr. pp. 32 & 33, Appl. Ex. No. 10B)

19. The first occupants of the fourth duplex living unit were Mr. and Mrs. Mercer. On the date of the hearing Mr. Mercer was in the intermediate care nursing facility and Mrs. Mercer was still living in this unit. (Tr. p. 33, Appl. Ex. No.10C)

20. Each of the foregoing first occupants of these units were required to pay an admission fee of $67,500.00. The first $3,000.00 of this admission fee which was to reserve the unit, was required to accompany the executed Occupancy Agreement and was nonrefundable. When the Society was ready to begin construction, the Society so notified the prospective residents and they were to deposit one-half of the admission fee. Thirty days before the unit was ready to be occupied, the prospective residents were notified and required to pay the remaining one-half of the admission fee. (Appl. Ex. 10)

21. The total cost of construction of the four Chestnut Street duplex units was $312,056.55. This equals a cost per unit of $78,014.13. (Tr. p. 80, Appl. Ex. No. 16)

22. If a duplex resident moved out of this unit within a year of moving into the duplex, 90% of the admission fee is refunded to the resident. If a duplex resident moved out after more than one year, 80% of the admission fee is refunded to the resident. If a duplex resident died while living in a duplex, the appropriate portion of the admission fee, depending on the decedent's length of time of residence in the duplex, was refunded to his or her estate. (Tr. p. 64)

23. Each of the four original residents of these two duplex units paid their entire admission fee before they moved in. (Tr. p. 104)

24. During 1995, each resident was required to pay a monthly service charge of $275.00. (Appl. Ex. 10)

25. Pursuant to the Occupancy Agreement, the monthly service charge provides the duplex residents with general maintenance, housekeeping services, snow removal, lawn care, emergency call response, fire alarm detection, building repairs, appliance repairs and utilities. The monthly service charge does not provide for telephone and cable. (Tr. pp. 33-38)

26. The Occupancy Agreement includes a provision for discharge of a resident for nonpayment of the monthly service charge. The Center's witness indicated that if a resident had the funds to pay the monthly service charge, but refused to pay, then the Center would discharge that person. However, if the resident did not have the funds to pay, the Center would not discharge that person. (Tr. p. 68, Appl. Ex. No. 10)

27. The Center's witness testified that pursuant to the Ev. Lutheran Good Samaritan Society's corporate resolution, a resident would not be discharged from a duplex unit if the resident was unable to pay the monthly service charge. The Center would first use the refundable portion of the admission fee to pay the monthly service charge. (Tr. p. 66)

28. The Center in 1996 set up an endowment account out of the profits generated by the duplexes to pay the monthly service charges of the duplex residents who were determined to be unable to pay those charges. (Tr. pp. 66 & 67)

29. The Occupancy Agreement includes a charge for late payment of the monthly service charge. While that late payment charge has not been enforced, the Center's witness testified that it would be enforced if necessary. (Tr. p. 103)

30. Each of the four original residents paid their entire $275.00 monthly service charge during each month of the 1995 assessment year. (Tr. p. 104)

31. The Occupancy Agreement provides that the residents of the duplexes shall have a first preference to get into the intermediate care nursing facility. (Tr. p. 39)

32. The Occupancy Agreement also provides that real estate taxes or other Illinois taxes assessed or assigned will be passed on to the resident through the monthly service charge. (Appl. Ex. Nos. 10, 10A, 10B, & 10C)

33. To reside in a duplex unit a resident must be at least 62 years of age and able to live independently. (Tr. p. 96)

34. The Society has been determined to be exempt from federal income tax pursuant to Internal Revenue Code Section 501 (c)(3). (Tr. p. 61, Dept. Ex. 2S)

35. The Society has no capital, capital stock or shareholders, and does not profit from the enterprise. (Tr. pp.56 & 57)

36. I take Administrative Notice of the Director of Revenue's decision in the matter of the Evangelical Lutheran Good Samaritan Society, Docket Nos. 87-37-58 and 88-37-19 which concerned the parcels where the Society's 72 bed intermediate care nursing home and eight independent living apartments are located. That decision provided that the Society was a charitable organization in its operation of the intermediate care facility and the independent living apartments. That recommendation specifically found that the Society did not charge an entrance fee or an admission fee concerning either of those two facilities. (Appl. Ex. No. 4)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

> All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

> (a) Institutions of public charity;
> (b) Beneficent and charitable organizations incorporated in any state of the United States....

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

I conclude that the Society owned Henry County Parcel Index Nos. 08-21-407-044-0040 and 08-21-407-043-0041 and the duplex residences located thereon during the entire 1995 assessment year.

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. Based on the foregoing findings of fact, I conclude that the Society and the Center, concerning the Chestnut Street duplexes, did not waive or reduce the admission fees of any of the first residents of those duplexes during the 1995 assessment year. I also conclude that the Society and the Center did not waive or reduce the maintenance fees of any of the residents of the Chestnut Street duplexes during 1995. In view of the fact that the cost of each of these duplex units exceeded the admission fees collected by more than $10,500.00, it would appear that the Society and the Center were not in a position to waive or reduce the admission fee even if they were requested to do so.

Consequently, I conclude that the Society and the Center have failed to establish that the benefits derived are for an indefinite number of persons, that charity is dispensed to all who need and apply for it, and that no obstacles are placed in the way of those seeking the benefits.

I conclude that the Society and the Center have failed to establish that the funds concerning the Chestnut Street duplexes were derived from public and private charity in 1995. Instead, I conclude that the funds concerning those units were primarily derived from the admission fees and maintance fees paid by the residents of those units during 1995. I therefore conclude that the Society and the Center have failed to establish that they operated the Chestnut Street duplexes in a charitable manner during 1995.

In view of the fact that no admission fees or maintance fees were waived or reduced, that the Occupancy Agreements with the residents provided for discharge for the nonpayment of maintance fees, and penalties for late payment of rent, I conclude that the Society and the Center failed to establish that the parcels here in issue were used for charitable purposes during the 1995 assessment year.

In the case of <u>Fairview Haven v. Illinois Department of Revenue</u>, 153 Ill.App.3d 763 (4th Dist. 1987), which involved a nursing home and certain independent living units owned by four Apostolic Christian Churches of America Congregations, the Court held that the operation of the nursing home portion of the property was not primarily a religious use of the property but rather a charitable use of said property. The Center, in its brief also contends that the use of these parcels and the duplexes thereon is primarily a religious use of the property. However, although the Society is affiliated with certain Lutheran churches, the facts establish that during 1995 the duplexes operated by the Society and the Center on these parcels were operated in a business like manner, as the independent living units were operated in the Fairview Haven case, and not primarily for religious purposes.

In the Fairview Haven case, the Court, while exempting the nursing home, denied the exemption for certain independent living units which required an up front lump sum payment before occupancy. While the terminology concerning the agreement was different than in this case, the basic elements were the same. The basic elements included the payment of an up front fee, which was not waived or reduced, and which included a portion which was returned when the resident vacated the unit. *See also* The Good Samaritan Home of Quincy v. Illinois Department of Revenue, 130 Ill.App.3d 1036 (4th Dist. 1985).

Where definable areas of property are used for two purposes, one of which is exempt from taxation and one of which is not exempt, a tax should be imposed against the part of the property which does not qualify for exemption. City of Lawrenceville v. Maxwell, 6 Ill.2d 42 (1955), Fairview Haven v. Department of Revenue, 153 Ill.App.3d 763 (4th Dist.1987). I therefore conclude that while the Director has previously determined that the 72 bed intermediate care nursing home and the eight independent living apartments qualified for exemption, the Chestnut Street duplexes do not qualify for exemption.

I therefore recommend that Henry County Parcel Index Nos. 08-21-407-044-0040 and 08-21-407-043-0041 and the buildings thereon remain on the tax rolls for the 1995 assessment year and be assessed to the Evangelical Lutheran Good Samaritan Society, the owner thereof.

Respectfully Submitted,

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George H. Nafziger
Administrative Law Judge
October 19, 1998